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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,680	07/28/2000	Terry L. Cole	2000.025496	3548
23720	7590	04/18/2005	EXAMINER	
WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			SAM, PHIRIN	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/627,680

Applicant(s)

COLE ET AL.

Examiner

Phirin Sam

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21,23,25,28-30,33 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12,20,21,23,28-30,33 and 35-44 is/are allowed.
- 6) ☒ Claim(s) 13-16,18,19 and 25 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.


### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

  
PHIRIN SAM  
PRIMARY EXAMINER

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by British Telecom. WO 95/31865 hereinafter referred as “BT”.

**Regarding claims 13-16**, BT disclose a device for determining the suitability of a copper line, used for transmitting voice band signals and having one or more user devices coupled thereto for transmitting signals on the copper line, for use in transmitting data signals out-of-band with the voice band signals (see Figs. 1 and 3, elements 5 and 6, the device comprising:

- (a) a signal generator for coupling to the copper line at one point, the signal generator providing a test signal to the copper line, the test signal having a known relationship to a particular out-of-band data transmission scheme (see Fig. 2, element 5, page 2, lines 5, 11-15);
- (b) a monitoring circuit coupled to the copper line proximate the one point to monitor a response of the copper line to the test signal, as influenced by the one or more user devices (see Fig. 2, page 2, lines 7-8, 26-33);
- (c) a processing unit coupled to the monitoring circuit to receive the monitored response of the copper line to the test signal and to output an indication of the suitability of the copper line for use in transmitting data signals using the particular out-of-band data transmission scheme (see Fig. 3, element 14, page 5, lines 15-20, 25-27, page 6, lines 20-22).

Art Unit: 2661

3. Claims 18, 19, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over British Telecom. (WO 95/31865) hereinafter referred as “BT” in view of US Patent 6,047,051 hereinafter referred to as “Ginzboorg”.

**Regarding claims 25 and 18-19**, BT discloses a communications system, comprising:

- (a) a communication line (see Fig. 1, element 3);
- (b) a plurality of user devices coupled to the communication line (see Fig. 1, element 1, wherein it is obvious that there are more than one device 1 couple to line 3);
- (c) a test unit adapted to determine the suitability of the communication line for use in transmitting data signals using the out-of-band data transmission protocol, the test unit being adapted to provide a test signal having a known relationship to the out-of-band data transmission protocol on the communication line, monitor a response of the communication line to the test signal as influenced by the user devices, and output an indication of the suitability of the communication line for use in transmitting data signals using the out-of-band data transmission protocol based on the response (see Figs. 1-3, page 6, lines 6-19).

BT does not disclose a computer system coupled to the communication line and being adapted to contact a vendor for supplying service using the out-of-band data transmission protocol over the modem, provide the vendor with physical location information associated with the communication line, and receive service availability data based on the physical location information. However, Ginzboorg discloses a computer system coupled to the communication line (see Fig. 2, col. 4, lines 1-6) and being adapted to contact a vendor for supplying service using the out-of-band data transmission protocol over the modem (see Fig. 2, abstract, col. 4, lines 1-6, 43-61), provide the vendor with physical location information associated with the

Art Unit: 2661

communication line, and receive service availability data based on the physical location information (see Fig. 2, col. 5, lines 34-51). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the vendor for supplying service and receive service availability data based on the physical location information teaching by Ginzboorg with BT. The motivation for doing so would have been to provide to make it easier for new service providers to start operation and monitor the service level used by the customer read on column 3, lines 5-6, 12-14. Therefore, it would have been obvious to combine Ginzboorg and BT to obtain the invention as specified in the claims 18, 19, and 25.

***Allowable Subject Matter***

4. Claims 1-12, 20, 21, 23, 28-30, 33, and 35-44 allowed.
5. Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed on March 17, 2005 have been fully considered and are persuasive. Therefore, the Final Office Action is withdrawn.

***Conclusion***

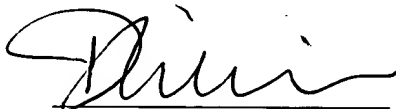
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phirin Sam whose telephone number is (571) 272-3082. The examiner can normally be reached on Mon-Fri, 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T Nguyen can be reached on (571) 272 - 3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully submitted,

Date: April 15, 2005

A handwritten signature in black ink, appearing to read 'Phirin Sam', written over a horizontal line.

**PHIRIN SAM  
PRIMARY EXAMINER**